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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/760,130	01/16/2004	Terrence John Morris	FORRB 67045	7201

24201 7590 10/10/2006

FULWIDER PATTON
6060 CENTER DRIVE
10TH FLOOR
LOS ANGELES, CA 90045

EXAMINER	
BASICHAS, ALFRED	
ART UNIT	**PAPER NUMBER**
3749	

DATE MAILED: 10/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/760,130	MORRIS, TERRENCE JOHN	
	Examiner	Art Unit	
	Alfred Basichas	3749	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *26 June 2006*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1 and 3-16* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1 and 3-16* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. Claims 1, 6, 9, 15, and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kobayashi (3,733,170) in view of Hagino (6,386,752)). Kobayashi discloses substantially all of the claimed limitations including, among other things, a burner head having a cylindrical wire mesh cylindrical tube member with support members in and out of the tube, and rings of wire running axially. Kobayashi does not specifically recite the use of wedge wire. Hagino teaches a cylindrical tube made of wedge wire in order to provide a screen which acts as a form of filter. It is well

established in the art that metal wire screens may be utilized for various applications including those disclosed by Kobayashi and Hagino. While the two references relate to different types of inventions, both involve the use of a well known device. Choosing a screen shape and material is a matter of intended use and effect. In addition, it is well settled that "where the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation." In re Aller, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955) (Claimed process which was performed at a temperature between 40°C and 80°C and an acid concentration between 25% and 70% was held to be prima facie obvious over a reference process which differed from the claims only in that the reference process was performed at a temperature of 100°C and an acid concentration of 10%.); see also Peterson, 315 F.3d at 1330, 65 USPQ2d at 1382 ("The normal desire of scientists or artisans to improve upon what is already generally known provides the motivation to determine where in a disclosed set of percentage ranges is the optimum combination of percentages."). Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the screen arrangement taught by Hagino into the invention disclosed by Kobayashi, because it is within the general skill of one of ordinary skill in the art to select a known structure on the basis of its suitability for the intended use.

4. Claims 3-5, 7, 8, and 10-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kobayashi (3,733,170) in view of Hagino (6,386,752)), and further in in view of Nishida (5,387,399). The combination of Kobayashi in view of Hagino

teaches substantially all of the claimed limitations but does not specifically recite the claimed element orientations. Nishida teaches a screen for a burner (see at least figs. 9a-c) including various element orientations (see at least figs. 2a,3a,7,8,10,11). Nishida teaches that the variations have distinct characteristics and uses depending on the needs of the device (see at least col. 7, line 60, through col. 8, line 42). Accordingly, it would have been obvious at the time of the invention to incorporate the claimed wedge shape and element orientations as made obvious by Nishida into the invention taught by the above combination, so as to provide for the uses and need of the device. It should further be noted that it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable characteristics involves only routine skill in the art. *In re Aller*, 105 USPQ 233; *In re Swain,* 156. In addition, as regards the claims reciting how the apparatus is manufactured, the prior art apparatus appears to be the same as claimed. This product-by-process limitation would not be expected to impart distinctive structural characteristics to the apparatus. Accordingly, it would have been obvious to one of ordinary skill in the art at the time of the invention to utilize any process including, that which is recited in the claims to have produced the elongated elements. *Note: Applicant may overcome this rejection by providing evidence that the claimed product-by-process limitation imparts a distinctive structural characteristic to the claimed invention, but a statement or argument by Applicant will not be deemed factual evidence. Of course, even if evidence were provided to overcome anticipation, one would still need to assess whether it would have been a prima facie obvious method.*

Response to Arguments

5. Applicant's arguments with respect to the claim have been considered but are moot in view of the new grounds of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alfred Basichas whose telephone number is 571 272 4871. The examiner can normally be reached on Monday through Friday during regular business hours.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ehud Gartenberg can be reached on 571 272 4828. The fax phone numbers for the organization where this application or proceeding is assigned are 571 273 8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Tech Center telephone number is 571 272 3700.

September 19, 2006

Alfred Basichas
Primary Examiner